

favorable and unfavorable, should be considered and assessed in terms of accuracy, completeness, relevance, seriousness, overall significance, and how similar cases have been handled in the past.

(c) The adjudicating official who conducts the adjudication must first have been the subject of a favorable background investigation.

(d) Each adjudicating official must be thoroughly familiar with all laws, regulations, and criteria involved in making a determination for eligibility.

(e) The adjudicating official must review the background investigation to determine the character, reputation, and trustworthiness of the individual. At a minimum, the background investigation must:

(1) Review each security investigation form and employment application and compare the information provided.

(2) Review the results of written record searches requested from local law enforcement agencies, former employers, former supervisors, employment references, and schools.

(3) Review the results of the fingerprint charts maintained by the FBI or other law enforcement information maintained by other agencies.

(4) Review any other information obtained through a background investigation, including the results of searches by State human services agencies, the OPM National Agency Check and Inquiries, the OPM Security/Suitability Investigations Index, and the Defense Clearance and Investigations Index.

(5) Determine whether the individual has been found guilty of, or entered a plea of *nolo contendere* or guilty to, any felonious offense, or any of two or more misdemeanor offenses under Federal, State, or Tribal law, involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children.

(f) After an opportunity has been afforded the individual to respond, pursuant to §136.415, and it is adjudicated that the individual has been found guilty of or entered a plea of *nolo contendere* or guilty to an enumerated offense under paragraph (e)(5) of this section, that individual shall not be placed or retained in a position involv-

ing regular contact with or control over Indian children.

(g) For individuals who have been determined to be ineligible for employment in positions having regular contact with or control over Indian children, the IHS may use Federal adjudicative standards to certify that an individual is suitable for employment in a position, if available, that does not involve regular contact with or control over Indian children. The adjudicating official must determine that the individual's prior conduct will not interfere with the performance of duties and will not create a potential risk to the safety and well-being of any Indian children after consideration of the following factors:

(1) The nature and seriousness of the conduct in question.

(2) The recency and circumstances surrounding the conduct in question.

(3) The age of the individual at the time of the incident.

(4) Societal conditions that may have contributed to the nature of the conduct.

(5) The probability that the individual will continue the type of behavior in question.

(6) The individual's commitment to rehabilitation and a change in the behavior in question.

(7) The degree of public trust and the possibility the public would be placed at risk if the individual is appointed to the position.

§ 136.415 What rights does an individual have during this process?

(a) The individual must be provided an opportunity to explain, deny, or refute unfavorable and incorrect information gathered in an investigation, before the adjudication is final. He/she should receive a written summary of all derogatory information and be informed of the process for explaining, denying, or refuting unfavorable information.

(b) The adjudicating officials must not release the actual background investigative report to an individual. However, they may issue a written summary of the derogatory information.

(c) The individual who is the subject of a background investigation may request, to the extent permissible by law, a copy of the reports from the originating (Federal, State, or other Tribal) agency and challenge the accuracy and completeness of any information maintained by that agency.

(d) The results of an investigation cannot be used for any purpose other than to determine eligibility for employment in a position that involves regular contact with or control over Indian children.

(e) Investigative reports contain information of a highly personal nature and must be maintained confidentially and secured in locked files. Investigative reports must be seen only by those officials who, in performing their official duties, need to know the information contained in the report.

§ 136.416 When should the IHS deny employment or dismiss an employee?

The IHS must deny employment to an individual or dismiss an employee, when the duties and responsibilities of the position the individual person would hold or holds involve regular contact with or control over Indian children, and it has been adjudicated, pursuant to § 136.414 and § 136.415, that the individual has been found guilty of, or entered a plea of guilty or nolo contendere to, any felonious offense, or any of two or more misdemeanor offenses, under Federal, State or Tribal law involving a crime of violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children. The IHS has the discretion to place such an individual in a position, if available, that does not involve regular contact with or control over Indian children, if a determination has been made that such placement would not put Indian children at risk and the individual would be able to perform the duties and responsibilities of this position.

§ 136.417 May the IHS hire individuals pending completion of a background investigation?

Pursuant to section 231 of the Crime Control Act of 1990, Pub. L. 101-647, 42

U.S.C. 13041, as amended by Pub. L. 102-190, the IHS may hire provisionally individuals as defined in these regulations, prior to the completion of a background investigation if, at all times prior to receipt of the background investigation during which children are in the care of the individual, the individual is within the sight and under the supervision of a staff person and a satisfactory background investigation has been completed on that staff person.

§ 136.418 What should the IHS do if an individual has been charged with an offense but the charge is pending or no disposition has been made by a court?

(a) The IHS may deny the applicant employment until the charge has been resolved.

(b) The IHS may deny the employee any on-the-job contact with children until the charge is resolved.

(c) The IHS may detail or reassign the employee to other duties that do not involve regular contact with children.

(d) The IHS may place the employee on indefinite suspension, in accordance with statutory and regulatory requirements, until the court has disposed of the charge.

PART 136a—INDIAN HEALTH

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